

1
2
3
4
5
6
7
8
9
10
11
UNITED STATES OF AMERICA,
Plaintiff,
v.
SIGURD ANDERSON,
Defendant.

Case No. 14-cv-01932-JST

ORDER DENYING MOTION TO STAY

Re: ECF Nos. 62, 64

12 On November 25, 2014, the Court granted the Government's Petition to Enforce the IRS
13 Summons. ECF No. 61. The Court ordered Respondent Sigurd Anderson "to appear before
14 Revenue Agent Sarah Ho, or any other proper officer or employee of the IRS, at such time and
place as may be set by Revenue Agent Ho or her designee, and produce the documents and give
15 the testimony called for by the terms of the summons dated December 17, 2013, a copy of which
16 may be attached as an exhibit to the Declaration of Sarah Ho dated April 25, 2014." Id.
17

18 Respondent has now filed a motion to stay the Court's order granting the petition to
19 enforce the summons. ECF No. 62. Respondent has also filed a motion for instructions to comply
20 with the Court's order. ECF No. 64.

21 **I. BACKGROUND**

22 The underlying petition arises from an Internal Revenue Service ("IRS") investigation
23 being prosecuted by Revenue Agent Sarah Ho ("Agent Ho"). ECF No. 1 at ¶ 4. The investigation
24 concerns Respondent's tax liabilities and investment activities for the years of 2009 and 2010. Id.
25 On December 17, 2013, Agent Ho issued a summons for documents and testimony related to the
26 alleged tax liabilities. Id. at ¶ 5; ECF No. 1-2. Pursuant to the summons, IRS officials including
27 Agent Ho interviewed Respondent on January 14, 2014. Respondent refused to answer a majority
28 of the questions posed to him, and did not supply any of the requested documents, claiming

1 various grounds of privilege. Id. at 9-10.

2 Seeking a court order compelling Respondent's cooperation with the summons, the IRS
3 filed a petition to enforce the IRS summons on April 25, 2014. ECF No. 1. On May 23, 2014, this
4 Court found that the Government had established its prima facie case and ordered Respondent to
5 show cause why he should not be compelled to produce the requested documents and testimony.
6 ECF No. 9. Following briefing on the order to show cause, the Court concluded that Respondent
7 had not succeeded in meeting his heavy burden to demonstrate that the government had not met its
8 prima facie case or that the summons had been brought for an improper purpose. ECF No. 61 at
9 3-6. The Court also rejected Respondent's attempts to invoke a blanket privilege over all the
10 documents and answers sought by the IRS. Id. at 6.

II. MOTION TO STAY

A. Legal Standard

Under Federal Rule of Civil Procedure 63(c), a District Court "may suspend, modify, restore, or grant an injunction" while an appeal is pending from a final judgment. "The Court considers the same criteria as the traditional equitable criteria for granting preliminary injunctive relief, which are: (1) a strong likelihood of success on the merits; (2) the possibility of irreparable injury to the moving party if the stay is not granted; (3) a balance of hardships favoring the moving party; and (4) advancement of the public interest." United States v. Lee, Goddard & Duffy, LLP, 553 F. Supp. 2d 1164, 1166-67 (C.D. Cal. 2008).

B. Analysis

i. Likelihood of Success on the Merits

The Court finds that Respondent is unlikely to succeed on appeal, weighing against the issuance of a stay. A party seeking to prevent the enforcement of an IRS summons bears a heavy burden. Crystal v. United States, 172 F.3d 1141, 1144 (9th Cir. 1999). "The courts' role in a proceeding to enforce an administrative subpoena is extremely limited." RNR Enterprises, Inc. v. S.E.C., 122 F.3d 93, 96 (2d Cir. 1997). "Enforcement of a summons is generally a summary proceeding to which a taxpayer has few defenses." United States v. Derr, 968 F.2d 943, 945 (9th

1 Cir. 1992).

2 The Court analyzed Respondent's arguments in its order granting the petition for
3 enforcement of the IRS summons and found that Respondent had failed to satisfy that burden.
4 ECF No. 61. In resolving this motion, the Court has again reviewed Respondent's arguments
5 again and concludes they lack merit. In his motion to stay, Respondent asserts several arguments
6 that were not properly raised in his initial briefing, but raised for the first time in a motion to
7 strike, which the Court declined to address in its prior order. Id. at 7. These arguments are also
8 unlikely to prove successful on appeal. The Court notes that Respondent's likelihood of success
9 on appeal is further lessened by the clearly erroneous standard of review that will be applied by
10 the Ninth Circuit to the mixed questions of law and fact presented. See, e.g., United States v.
11 Blackman, 72 F.3d 1418, 1422 (9th Cir. 1995); Lee, Goddard & Duffy, 553 F.Supp.2d at 1167.

12 **ii. Irreparable Injury**

13 Respondent argues that he will be irreparably injured in the absence of a stay because he
14 will be compelled to waive his privilege. The Court disagrees. The Supreme Court has held that
15 an appeal of a Court's order enforcing compliance with an IRS summons is not mooted when the
16 documents are produced or testimony is given. Church of Scientology of California v. United
17 States, 506 U.S. 9, 13 (1992). Although "a court may not be able to return the parties to the *status*
18 *quo ante*—there is nothing a court can do to withdraw all knowledge or information that IRS
19 agents may have acquired by examination of the tapes—a court can fashion *some* form of
20 meaningful relief in circumstances such as these." Church of Scientology of California v. United
21 States, 506 U.S. 9, 12-13 (1992). Citing Church of Scientology, District Courts have routinely
22 found that no irreparable injury would result from the denial of a stay pending appeal of an order
23 enforcing compliance with an IRS summons. See, e.g., Lee, Goddard & Duffy, LLP, 553 F. Supp.
24 2d at 1168; United States v. Diversified Grp., Inc., No. M 18-304 PKL, 2002 WL 31812701, at *1
25 (S.D.N.Y. Dec. 13, 2002); United States v. Bright, No. CIV. 07-00311 ACK-KS, 2008 WL
26 351215, at *2 (D. Haw. Feb. 7, 2008). The Court agrees that Respondent will not be irreparably
27 injured in the absence of a stay.

1 **iii. Balance of Hardships and Public Interest**

2 The balance of hardships weighs against a stay, as the government has a “need to assess
3 and collect taxes as expeditiously as possible with a minimum of pre-enforcement judicial
4 interference.” Bob Jones Univ. v. Simon, 416 U.S. 725, 736 (1974). Because the government
5 served the summons over a year ago, petitioner has already succeeded in frustrating the
6 government’s efforts to expeditiously assess Respondent’s tax liabilities. Issuance of a stay
7 pending appeal would further complicate a potential IRS investigation, because the passage of
8 time would result in the dimming of memories of witnesses and the potential loss of documents.
9 In contrast, as noted above, any injury to Respondent resulting from compliance could be
10 remedied if Respondent’s arguments ultimately prevail on appeal. See Church of Scientology,
11 506 U.S. at 12-13. Therefore, the balance of hardships weighs against granting the stay.

12 “In actions brought by federal agencies, ‘the government's interest is in large part
13 presumed to be the public's interest.’” Bright, 2008 WL 351215 at *3 (citing United States v.
14 Rural Elec. Convenience Cooperative Co., 922 F.2d 429, 440 (7th Cir.1991)). Given the
15 government’s substantial interest in assessing tax liability, staying the enforcement of the
16 summons further would also be contrary to the public interest.

17 **C. Conclusion**

18 Because all of the factors weigh against a stay of the enforcement of the summons,
19 petitioner’s request for a stay pending appeal is denied.

20 **III. MOTION FOR INSTRUCTIONS TO COMPLY**

21 Respondent has also filed a motion for miscellaneous relief asking the Court for
22 instructions on how to comply with the Court’s order granting enforcement of the summons. ECF
23 No. 64. Respondent essentially asks the Court to instruct him how he may avoid the risk of being
24 held in contempt in the future. Respondent does not identify any authority under which he seeks
25 such relief.¹ The Court cannot offer Respondent instructions on how to proceed so as to avoid

26
27 ¹ On January 7, 2015, Respondent filed a Statement of Recent Decision for the purpose of calling
28 the Court’s attention to Inst. of Cetacean Research v. Sea Shepherd Conservation Soc'y, No. 12-
35266, ___ Fed. Appx. ___, 2014 WL 7235539 (9th Cir. Dec. 19, 2014). The filing violated Local

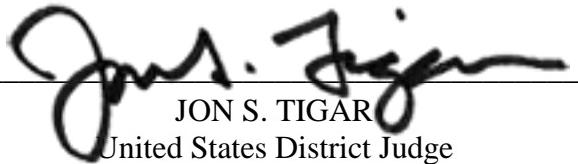
1 being held in contempt, as no motion for contempt is currently before the Court. The Court notes
2 only that the government's prior motion, which the Court granted, sought to enforce the IRS
3 summons. ECF No. 61. The Court again directs Respondent to "produce the documents and give
4 the testimony called for by the terms of the summons dated December 17, 2013." Id. at 7-8.

5 **IV. CONCLUSION**

6 For the foregoing reasons, Respondent's motion for a stay and motion for instructions to
7 comply are both DENIED.

8 **IT IS SO ORDERED.**

9 Dated: January 21, 2015



JON S. TIGAR
United States District Judge

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

United States District Court
Northern District of California

Rule 7-3(d), which provides that, "[o]nce a reply is filed, no additional memoranda, papers or letters may be filed without prior Court approval. The only relevant exception is that "*[b]efore the noticed hearing date*, counsel may bring to the Court's attention a relevant judicial opinion published after the date the opposition or reply was filed by filing and serving a Statement of Recent Decision, containing a citation to and providing a copy of the new opinion—without argument." Id., subpart (2). Nonetheless, the Court has considered the Cetacean Research case in deciding this motion. In that case, a panel of the Ninth Circuit observed that a defendant who claimed that the terms of an injunction were unclear had not availed itself of the opportunity to seek clarification of those terms from the issuing court. Id. at *16. The case does not create a right to seek from a court clarification of the terms of a summons issued by a third party.